

REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office Action dated March 23, 2005 are respectfully requested. By this response, claim 23 has been amended to address a typographical error, and claims 62-68 have been canceled to expedite prosecution of this application.

The applicant's representative wishes to thank the Examiner for the thorough office action, including the specific recitation of portions within the applied references with respect to certain claims, and for the indication of allowable subject matter.

Embodiments of the invention are first discussed, followed by a discussion of the Gordon reference. Next, distinctions between claim 13 and the applied references are discussed, followed by distinctions between the applied references and the remaining independent claims.¹

Embodiments of the Claimed Invention

Embodiments of the claimed invention are directed to a method of facilitating the delivery of a document from a source to a destination over a network. Upon an unsuccessful attempt at a delivery of the document, a system employing the method retrieves alternative destination numbers different from an initially attempted number. After retrieving the destination numbers, the system obtains delivery information related to delivering the document to the destination. For example, the system selects one of the alternative numbers, investigates the number to see if the number is open, researches the number to make an intelligent decision regarding the number, and (1) retries the delivery with the alternative destination number based on favorable research results (e.g. the number is deemed operating and active) or (2) looks to another alternative destination number and follows the same method (See Figures 3-7) and pages 16-20.

¹ Silence regarding a position taken by or argument made by the Examiner does not indicate any acquiescence to that position or argument. Furthermore, arguments made with respect to a particular claim or claims apply only to that claim or claims, and not to other claims, unless specifically noted herein.

The Gordon Reference

The system of Gordon is directed to utilizing a number of Store and Forward facilities (SAFFs) in order to facilitate the delivery of documents. The system utilizes typical SAFF functionality, including the interception and storing of messages sent from a source machine to a destination machine. After interception, the SAFF is able to send and resend stored messages, thus transferring this burden away from a source machine. When delivery attempts to a destination machine are unsuccessful, the SAFF will "enter a sequence whereby it will attempt to contact the destination machine and transmit the document on a predetermined schedule for a specific period of time or number of tries" (Column 9, lines 16-22). Upon continued failure, the system transmits this failure status to an originator (i.e. the person sending the document) who then provides instructions to the SAFF regarding disposal of the document (Column 9, lines 40-45).

Rejections under 35 U.S.C. § 102

Claims 13-15, 19-22, 24-54, 56-68, 77 and 78 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gordon et al. (U.S. Patent No. 5,291,302).²

Claim 13 recites a computer-implemented method for facilitating delivery of a document from a source to a destination over a network, including the step of "performing an additional attempt to deliver the document to the destination by, obtaining delivery information related to delivering the document to the destination" and "selecting one of the alternative destination numbers as a second destination number, the selecting based at least in part on the obtained delivery information."

² MPEP section 2131, p. 70 (Feb. 2003, Rev. 1). See also, *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1462 (Bd. Pat. App. & Interf. 1990) (to establish a *prima facie* case of anticipation, the Examiner must identify where "each and every facet of the claimed invention is disclosed in the applied reference."); *Glaverbel Société Anonyme v. Northlake Mktg. & Supply, Inc.*, 45 F.3d 1550, 1554 (Fed. Cir. 1995) (anticipation requires that each claim element must be identical to a corresponding element in the applied reference); *Atlas Powder Co. v. E.I. duPont De Nemours*, 750 F.2d 1569, 1574 (1984) (the failure to mention "a claimed element (in) a prior art reference is enough to negate anticipation by that reference").

The Examiner suggests that "obtained delivery information" as recited by the claim is identical to a delivery failure in Gordon. The Examiner further suggests that "selecting one of the alternative destination numbers as a second destination number, the selecting based at least in part on the obtained delivery information" is identical to "selecting by means of an operator a second destination number" based on this failure discussed by Gordon. Applicants respectfully disagree for the following reasons.

A failed delivery in Gordon is not "delivery information" as claim 13 describes. The method of claim 13 obtains delivery information in a step different from the step of "determining that the initial delivery attempt was unsuccessful." Therefore, the indication of a failure with an initial destination number cannot be "obtained delivery information." In other words, the method of claim 13 provides not only some delivery failure (like Gordon), but also provides additional information, and thus the failed delivery information of Gordon cannot represent both recited features of claim 13.

In contrast to Gordon, the method described by claim 13 also selects an alternative destination number based on delivery information related to each of the destination numbers, and not based on whether a first number failed (or not, based exclusively on whether the first number failed). The claimed method seeks to choose a best possible second number based on information known or obtained about the alternative numbers, in order to deliver a document in a more efficient manner. The system of Gordon merely indicates a failure to deliver a document, and requests an operator to make a decision as to how to proceed further, wherein the operator may choose to input a different number and attempt to transmit the document to the different number (which may or may not be associated with the original destination).

Applicants submit that claim 13 and dependent claims 14, 15, 19-22 and 24-43 are patentable over Gordon for at least the reasons stated above, and respectfully request the rejections be withdrawn.

Independent claims 44, 47, 48 and 49 recite similar elements to those in claim 13, including the elements of "obtaining delivery information related to delivering the document to the destination" and "selecting...based at least in part on the obtained delivery information. Therefore, claims 44, 47, 48 and 49, and dependent claims 45 and

46 are patentable over Gordon for at least the reasons stated above, and applicants respectfully request the rejections be withdrawn.

Claim 50 recites a computer-implemented method for facilitating delivery of a document from a source to a destination over a network after an initial delivery attempt has been unsuccessful, including the step of "initiating rule based processing to determine a next action related to delivery of the document based on the determined group of current conditions at the remote destination."

The Examiner suggests that Gordon describes the host 85 as initiating rule based processing to determine a next action. Applicants respectfully disagree. Reciting from Gordon, if a delivery fails, the SAFF's host computer 85 "will enter a sequence whereby it will attempt to contact the destination machine and transmit the document" (Column 9, lines 15-20). The system of Gordon provides no indication that any rule-based processing occurs. On the contrary, Gordon clearly shows that the human "originator" gives instructions "as to how to dispose of the document" (Column 9, lines 40-46). Therefore, the system of Gordon does not show each and every element of claim 50 and does not anticipate the claimed invention.

Applicants submit that claim 50 and dependent claims 51-61 are patentable over Gordon for at least the reasons stated above, and respectfully request the rejections be withdrawn.

Claims 62 – 68 have been canceled to expedite prosecution of this application, and therefore the rejection over Gordon is moot.

Claim 77 recites a method for facilitating network delivery of a document from a source to a destination when an initial delivery attempt has been unsuccessful, including "determining a next of multiple possible actions related to the delivery of the document based at least in part on the retrieved information."

The Examiner suggests that "host 85 for generating a Delivery Record" is identical to "retrieving information related to past attempts to deliver other documents to the destination" and that the originator selecting from "retry, forward or deleting a

message" is identical to "determining a multiple possible actions...based at least in part on the retrieved information." Applicants respectfully disagree. Gordon describes "Acceptance," "Delivery" and "Retry" records, but does not describe records pertaining to the claimed "past attempts to deliver other documents to the destination" (past failed deliveries). In fact, if a delivery is still in failure mode, the user under Gordon may select a "failed-connection message disposition" choice. If the user does not retry the delivery (thus placing it back into the system where it will succeed or fail again and go back to failure mode), "the message is transmitted back to the originator with a report" and "it is then erased from both the originator and destination SAFF files" (Column 10, lines 3-18). Therefore, the system of Gordon does not save failed delivery information or other past delivery attempts, and thus does recite each and every feature of claim 77.

Applicants submit that claim 77 is patentable over Gordon for at least the reasons stated above, and respectfully request the rejection be withdrawn.

Claim 78 recites a method for facilitating network delivery of a document from a source to a destination when an initial delivery attempt has been unsuccessful, including "notifying a human operator that is not associated with the source or with the destination of the unsuccessful initial delivery attempt."

The Examiner suggests the "user accesses computer 85 by a remote terminal from both the originator and destination device" is identical "to notifying a human operator that is not associated with the source or with the destination of the unsuccessful initial delivery attempt." Applicants respectfully disagree. There is no indication in Gordon, especially in the Examiner's cited passages, of a human operator being notified of an unsuccessful delivery attempt. Gordon does indicate that an originator may access an **automated** voice response system, however, never indicates a human operator. Therefore, Gordon does not teach each and every element of claim 78.

Applicants submit that claim 78 is patentable over Gordon for at least the reasons stated above, and respectfully request the rejection be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 55, 69, and 70-76 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gordon in view of Greenstein et al. (U.S. Patent No. 5,065,426).

Claim 55 is dependent from claim 50, and therefore is patentable for at least the reasons discussed above with respect to claim 50.

Claim 69 recites a method for facilitating network delivery of a document from a source to a destination when an initial delivery attempt has been unsuccessful, including the step of "identifying an occurrence of a non-business day at the destination" and "determining a next of multiple possible actions related to the delivery of the document based at least in part on the identification of the occurrence of the non-business day."

The Examiner indicates that Gordon does not show "identifying an occurrence of a non-business day" and looks to Greenstein to supply this feature. The Examiner suggests that Greenstein's indication of a facsimile machine being programmed "to send a facsimile message or messages at a time when the phone rates are cheaper" and that therefore "a transmission is made during a non-business hour (when the [ph]one rates are the cheapest)" is identical to "identifying an occurrence of a non-business day at the destination" and "determining a next of multiple possible actions related to the delivery of the document based at least in part on the identification of the occurrence of the non-business day." Applicants respectfully disagree.

First, the Examiner is arguing that cheaper phone rates occur only during non-business hours. For example, some businesses are open during the week (such as the Patent Office) and some during nights and weekends (such as restaurants). Therefore, if there is a time period of cheaper phone rates, it would occur during the business hours of a multitude of businesses and also during the non-business hours of a multitude of businesses.

Second, programming a facsimile machine to transmit messages at a time when phone rates are cheaper does not identify any type of information at a destination, time period information or other. The price of sending a message would be based on the time at the originator machine, and would have nothing to do with the time at the destination, since destination machines can be located all over the world in different time zones than that of the originator machine.

Therefore, the combination of Gordon in view of Greenstein does not teach each and every element of claim 69.

Applicants submit that claim 69 and dependent claims 70-75 are patentable over Gordon in view of Greenstein for at least the reasons stated above, and respectfully request the rejection be withdrawn.

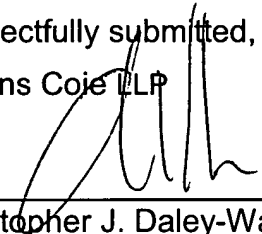
Claim 76 recite similar elements to those in claim 69, including the elements of "identifying an occurrence of a non-business hour at the destination." Therefore, claim 76 is patentable over Gordon in view of Greenstein for at least the reasons stated above, and applicants respectfully request the rejections be withdrawn.

Conclusion

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the applied art. A Notice of Allowance is, therefore, respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-3599. If the undersigned attorney has overlooked a relevant teaching in any of the references, the Examiner is requested to point out specifically where such teaching may be found.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0665, under Order No. 120148004US3 from which the undersigned is authorized to draw.

Respectfully submitted,
Perkins Coie LLP



Christopher J. Daley-Watson
Registration No. 34,807

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Correspondence Address:

Customer No. 25096
Perkins Coie LLP
P.O. Box 1247
Seattle, Washington 98111-1247
(206) 359-8000